

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EARL JOHN WILSON,

Petitioner and Appellant,

vs.

LAWRENCE E. WILSON, Warden
San Quentin State Prison
San Quentin, California

Respondent and Appellee.

No. 20865 /

APPELLEE'S BRIEF

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LAWRENCE E. WILSON, Warden)
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San Quentin, California)
Respondent and Appellee.)

)

APPELLEE'S BRIEF

JURISDICTION

The jurisdiction of the United States District Court to entertain appellant's petition for writ of habeas corpus was conferred by Title 28, United States Code section 2241. The jurisdiction of this Court is conferred by Title 28, United States Code section 2253, which makes a final order in a habeas corpus proceeding reviewable in the Court of Appeals when, as in this case, a certificate of probable cause has been issued.

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STATEMENT OF THE CASE

According to appellant's allegations in his petition to the district court, he was convicted, on February 6, 1964, of violating California Penal Code sections 261 (rape) and 459 (burglary).

After filing petitions for habeas corpus with state courts, appellant filed an application for a writ of habeas corpus in the United States District Court for the Northern District of California, Southern Division on January 28, 1966. The petition was denied on February 4, 1966, on the authority of Carrizosa v. Wilson, 244 F.Supp. 120 (N.D.Cal. 1965), which held that Escobedo v. Illinois, 378 U.S. 478 (1964) does not apply retroactively to affect convictions final before June 22, 1964.

Appellant's application for certificate of probable cause was granted on March 9, 1966.

ARGUMENT

THE RULE OF ESCOBEDO SHOULD NOT BE APPLIED RETROACTIVELY

Appellant seeks to upset his conviction by urging a retroactive application of the exclusionary rule of Escobedo v. Illinois, 378 U.S. 478 (1964). Appellant's conviction became final in February of 1964. The United States District Court, Northern District of California, Southern Division, has ruled in Carrizosa v.

Wilson, 244 F.Supp. 120 (N.D. Cal. 1965) that Escobedo is not to be applied retroactively. The district court below rejected appellant's contention, basing its conclusion on that authority. The Carrizosa case is presently before this Court (No. 20304) and the issue of the retroactivity of Escobedo has been extensively briefed therein by the Office of the Attorney General of California. Additional copies of the Carrizosa brief have been filed with this Court for its use in the instant appeal and a copy has been served upon appellant Wilson. The argument as presented in the Carrizosa brief is hereby incorporated by reference into this brief, and, we submit, completely disposes of appellant's contention in this regard. Appellant also asserts that his confession was coerced. But this allegation is purely conclusionary and appears to be based in his Escobedo allegations.

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CONCLUSION

For the reasons stated, it is respectfully submitted that the order of the district court denying appellant's petition for a writ of habeas corpus should be affirmed.

Dated: May 20, 1966

THOMAS C. LYNCH, Attorney General
of the State of California

ROBERT R. GRANUCCI
Deputy Attorney General

PAUL N. HALVONIK
Deputy Attorney General

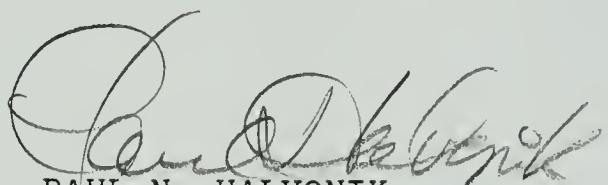
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PNH:pp
CR SF
66-128

CERTIFICATE OF COUNSEL

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit and that, in my opinion, this brief is in full compliance with these rules.

Dated: May 20, 1966



PAUL N. HALVONIK
Deputy Attorney General

